

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

---

**JESSE ORTIZ,**

**Plaintiff,**

**vs.**

**Case No: 2:11-cv-03123-STA-tmp**

**THE HERSHEY COMPANY,**

**Defendant.**

---

**PLAINTIFF'S MOTION TO ACCEPT LATE FILED CORRECTED RESPONSE TO  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND TO DECLARE THE  
AMENDED MOTION TO LATE FILE AS MOOT**

---

Comes now the Plaintiff, by and through counsel and requests the Court to accept Plaintiff's corrected late filed response to Defendant's Motion for Summary Judgment and to declare the previously Amended Motion for Extension as moot. As grounds for this extraordinary relief, counsel for the Plaintiff states the following:

1. That counsel completed and filed an appellant brief in the 6<sup>th</sup> Circuit on July 19, 2013, and counsel requested of Defendant that she be allowed until July 23, 2013, to file her Response.
2. That counsel, a sole practitioner, was pressed, to complete her response in this very short time span, and counsel requested until July 25, 2013, to file her response.
3. That the Defendant's acquire an additional two (2) days to file their reply brief or until August 8, 2013, again, subject to the court's approval.

4. That the Defendant did not oppose this request, moreover, it was contingent upon Plaintiff's agreement, subject to the court's approval, that Defendant's reply brief would be due August 6, 2013, rather than August 1, 2013.

5. That on July 25, 2013, counsel filed her response, more specifically; the same document was filed, in error, three (3) times, along with most of the attachments. The entire response was too large and was not accepted by the ECF system.

6. That on July 26, 2013, counsel received a Notice of Correction from the ECF technical team.

6. That in preparing to correct the deficiency, counsel noticed that grammatical corrections to the brief had not been completed, and that the document as filed, was not the intended submission. In addition, exhibits had not been successfully uploaded in the July 25, filing.

7. That the court's order allowing the Defendant's to substantially exceed the Local Rules for material facts greatly impacted Plaintiff's response time.

8. That Friday, July 26, 2013, unable to reach Amanda Haverstick and Edna Guerrasio via telephone, counsel emailed both attorneys and expressed her desire to make minor corrections to the document filed and her intention to file this motion simultaneously.

**WHEREFORE**, counsel for the Plaintiff respectfully requests:

1. That she be allowed to make minor grammatical adjustments to Plaintiff's response to Defendant's Motion for Summary Judgment.

2. That the Court takes steps to effect a clean docket regarding previously filed motions for extensions, specifically to declare Plaintiff's amended motion for extension moot.

3. That the Court accepts Plaintiff's late filed, corrected brief herein filed on July 29, 2013, and grant the Defendant's until August 8, 2013, to submit its reply brief.

Respectfully submitted,

s/ Linda Kendall Garner  
22 North Front Street, Suite 140  
Memphis, Tennessee 38103  
(901) 524-1111  
Facsimile (901) 524-1004  
lgarner4@comcast.net  
Attorney for Plaintiff

#### CERTIFICATE OF CONSULTATION

The Plaintiff's counsel spoke with Attorney Haverstick regarding her desire to make minor corrections to the document filed and has not received a definitive position. Once the Defendant's position is ascertained the Certificate of Consultation will be supplemented. Due to the difficulties experienced after the ECF Help Desk closes, Plaintiff's counsel filed this motion and Plaintiff's Response accompanied by supporting, corrected documents.

s/ Linda K. Garner

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing document was forwarded to Amanda D. Haverstick, and Edna Guerrasio, counsel for the Defendant via the court's ECF notification system, this 29<sup>th</sup> day of July, 2013.

Certified by: s/ Linda Kendall Garner